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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,837	05/28/2002	Neil Siewert	2643-1-001	5761

7590

04/22/2004

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EXAMINER

LAYNO, BENJAMIN

ART UNIT

3712

PAPER NUMBER

10

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/031,837

Applicant(s)

SIEWERT ET AL.

Examiner

Benjamin H. Layno

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. Applicant's arguments filed 2/2/04 have been fully considered but they are not persuasive. The Examiner is maintaining the rejection in the first Office action.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price in view of Franchi.

The Applicant is referred to the first Office action, paper number 8.

The Applicant has argued that in the claimed invention, events occur in delineated zones defining an area or volume in "real or created environment", while the delineated zones (e.g. "first down") in Price are simply labels and not defined as an environment. The Examiner disagrees. Price's delineated zones 50, 52, 54, 56 define an environment. The term "environment" is broad and vague.

#### ***Allowable Subject Matter***

4. The physical structure of a map of geographical area, sports field or sports court represented on the disclosed game apparatus, in combination with a wager or marker having a predetermined value measured in a predetermined number of value units for a game participant to associate with one of the delineated zones before said event, contains allowable subject matter. However, a map is not recited in the claims. Instead the claims use the broad and vague terminology "environment". The following proposed

amendment drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

In claim 1, lines 1-3 the recitation "using a environment in which an event occurs which itself is not a game of chance" should be deleted.

In claim 1, between lines 3 and 4, the paragraph:

"a map of a geographical area or a map of a sports field or sports court, said map having events that occur at different location on the map, wherein the occurrence of said events are not the result of a game of chance decided by a chance device;" should be inserted.

In claim 1, line 4 the recitation "the geographical area, sports field or sports court into" should be inserted after "delineate" and before "two".

In claim 1, line 5 the recitation "correspond to" should be deleted, and the recitation "divide the map into" should be inserted in its place.

In claim 1, line 5 "in said environment" should be deleted.

Changes similar to claim 1 above should be made to **all** the other independent claims (e.g. claims 19, 26, 27, 28). Claim 27 should also include the recitation of "a wager or marker.....". Also, all the terms "real or created environment", "live environment", etc. in the dependent claims should be changed to "map".

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Langan and Boudreaux et al. disclose sweepstakes or wagering games having a map of a baseball field. The patent to Sarno

discloses a lottery game wherein players bet on the closing numbers of the stock market.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

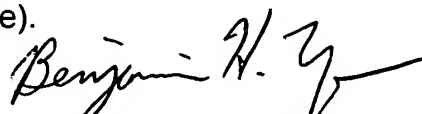
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (703) 308-1815. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3712

bhl